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| BINGHAM MCHALE LLP | | | GISSEL, GUNNAR J | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/596,208 | DJAKOV ET AL. |
| | Examiner | Art Unit |
| | Gunnar J. Gissel | 2856 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) ____ is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) ____ is/are rejected.
 7) Claim(s) ____ is/are objected to.
 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ . | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 26-29, 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thundat (6,311,549) in view of Maynard (6,408,496).
 1. Claims 26-29, 33-37 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,311,549 to Thomas Thundat et al. (Thundat).

Regarding Claim 26, Thundat discloses a method of determining a property of a fluid using a sensing element comprising: providing a flexible element having a first end and a second end and being movable from a first configuration to a second configuration via bending of said flexible element (Thundat, flexible element 3), said flexible element comprising an actuating portion arranged to move said flexible element between said first configuration and said second configuration (Thundat, actuating portion 4), inducing movement in said flexible element between said first configuration and said second configuration by applying a heat signal to said flexible element (Thundat, column 3, lines 10-15); receiving a signal from said sensing element, said signal being indicative of the induced movement of the flexible element within the liquid (Thundat, signal receiver 8); and processing said signal to determine a value indicative of at least one property of the liquid (Thundat, column 3, lines 20-25).

Thundat does not explicitly disclose that the movement of the second end of the flexible element between the first and second configurations is at least 30 micrometers.

It would have been obvious to one of ordinary skill in the art to modify Thundat's device with the technique of changing the scale or adopting the techniques that allow Maynard to use a cantilevered mass that can travel more than 30 micrometers (Maynard, column 6, lines 63-65).

Regarding Claim 27, Thundat discloses a method wherein said signal is processed to determine a value indicative of at least one property of a group comprising viscosity, temperature, flow rate and shear rate (Thundat, column 3, lines 20-25).

Regarding Claim 28, Thundat discloses a method further comprising determining a rate of change of movement of said flexible element, by monitoring a change in the received signal with time; and determining a value indicative of the viscosity of said fluid from said rate of change of movement (Thundat, column 2, lines 35-40).

Regarding Claim 29, Thundat discloses a method comprising determining an amplitude of movement of said flexible element from said received signal for a given applied heat signal (Thundat, column 3, lines 25-30); and determining a value indicative of the viscosity of said fluid from said amplitude (Thundat, column 5, lines 25-30).

Regarding Claim 33, Thundat discloses a method wherein the device comprises a plurality of flexible elements, such that the plurality of flexible elements may be used to determine a value indicative of at least one property of said fluid in a plurality of locations (Thundat, column 5, lines 67-68).

Regarding Claim 34, Thundat discloses a method wherein the device comprises a plurality of flexible elements, at least one of the plurality being used to cause a flow

within the fluid, and at least one of the plurality being used to determine a value indicative of at least one property of said fluid (Thundat, column 5, lines 67-68).

Regarding Claim 35, Thundat discloses a method further comprising holding the flexible element in at least one of said two configurations by a magnetic force (Thundat, lines 9-12).

Regarding Claim 36, Thundat discloses a method further comprising holding the flexible element in at least one of said two configurations by an electrostatic force (Thundat, lines 9-12).

Regarding Claim 37, Thundat discloses a method wherein said received signal is indicative of a maximum deflection of the flexible element, said signal being processed to determine the viscosity of the fluid (Thundat, column 3, lines 24-28). Resonance frequencies imply the maximum amplitude, which is equivalent to a maximum deflection of the flexible element. Thundat's device sends a continuous signal indicative of the deflection of the flexible element (Thundat, signal receiver 8).

2. Claims 38-40, 42-45, 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daraktchiev (6,457,360) in view of Maynard (6,408,496).

Regarding Claim 38, Daraktchiev discloses a device comprising a body region; a flexible element having a first end and a second end, said first end being fixedly located on said body region (Daraktchiev, figure 1a), said flexible element being arranged to move from at least a first configuration to a second configuration via bending of said flexible element (Daraktchiev, flexible element 1); said flexible element including a laminate of at least two layers and an actuating portion arranged to move said flexible

element between said first configuration and said second configuration (Daraktchiev, column 3, lines 31-35), the actuating portion being provided by at least a first layer of said laminate having a different coefficient of thermal expansion from a second layer of said laminate such that a change in temperature of said flexible element moves the flexible element from said first configuration to said second configuration (Daraktchiev, column 1, lines 45-50); said flexible element further including a heating element for heating at least said flexible element and providing said change in temperature (Daraktchiev, heating element 3); and a movement detector arranged to detect said movement of said flexible element (Daraktchiev, movement detector 2), and to provide a signal indicative of a property of a liquid in which the flexible element is immersed (Daraktchiev, column 4, lines 17-23).

Daraktchiev does not explicitly disclose the second end of the flexible element moving at least 30 micrometers between said first and second configurations.

Maynard discloses that a cantilevered silicon device is capable of a displacement greater than 30 micrometers (column 6, lines 63-65).

Applying Maynard's technique to Daraktchiev's device, or merely changing the scale of Daraktchiev's device would have yielded predictable results, as well as allowed for the claimed range of motion.

Regarding Claim 39, Daraktchiev discloses a device wherein said movement detector comprises a piezoresistive element located on said flexible element arranged such that the electrical resistance of the piezoresistive element changes due to movement of said flexible element (Daraktchiev, piezoresistive element 2).

Regarding Claim 40, Daraktchiev discloses a device further comprising latching means arranged to hold the flexible element in at least one of said two configurations.

Regarding Claim 42, Daraktchiev discloses a device wherein at least one of the first and second layers of said laminate comprises a polymer (Daraktchiev, column 4, lines 19-24).

Regarding Claim 43, Daraktchiev discloses a device wherein at least one of the first and second layers of said laminate comprises a material selected from a group consisting of polyimides, polyamides and acrylic polymers (Daraktchiev, column 4, lines 19-24). Daraktchiev is using an organic polymer as photoresist, and it is well known that organic polymers that double as photoresist are typically polyimides. Furthermore, applicant admits that use of polyimides as a material in the construction of MEMS cantilevers has been known since at least 1993 (Journal of Microelectromechanical systems, Vol. 2, No. 4, December 1993, page 147)

Regarding Claim 44, Daraktchiev discloses a device, wherein the second layer of said laminate comprises a metal (Daraktchiev, column 3, lines 33-36).

Regarding Claim 45, Daraktchiev discloses a device wherein the metal is selected from a group consisting of gold or aluminium (Daraktchiev, column 3, lines 33-36).

Regarding Claim 50, Daraktchiev discloses a device wherein said piezoresistive element is located on the flexible element at a position remote from the body region (Daraktchiev, column 3, lines 40-42).

Regarding Claim 51, Daraktchiev discloses a device wherein said piezoresistive element is formed as a layer of the laminate of said flexible element (Daraktchiev, figure 2a, column 3, lines 40-45).

3. Claims 41, 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daraktchiev modified by Maynard with teachings from Thundat.

Daraktchiev discloses a device, but does not explicitly disclose that the device comprises a movement detector using an electromagnetic radiation source and an electromagnetic radiation detector, or that the device comprises a plurality of flexible elements, or that the flexible elements are arranged in a first and second row, or that the length of the flexible elements from the first end to the second end is between 100 μ m and 1mm, and wherein the distance between the second end of the flexible element in said first configuration and the second end of the flexible element in said second configuration is between 30 μ m and 650 μ m.

Thundat discloses a device wherein said movement detector comprises an electromagnetic radiation source arranged to direct radiation towards said element, and an electromagnetic radiation detector arranged to detect electromagnetic radiation at least one of: reflected from, transmitted through, refracted from or diffracted by said flexible element (Thundat, column 6, lines 1-5). Thundat further discloses the device comprises a plurality of flexible elements (Thundat, column 5, lines 67-68). Thundat further discloses the plurality of flexible elements are arranged in a first row and a second row, each row comprising at least one flexible element, the flexible elements being arranged such that the at least one flexible element of the first row extends in

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opposition to the at least one flexible element of the second row (Thundat, column 5, lines 57-59). Thundat also teaches the length of the flexible element from the first end to the second end is between 100 μ m and 1mm, and wherein the distance between the second end of the flexible element in said first configuration and the second end of the flexible element in said second configuration is between 30 μ m and 650 μ m (Thundat, column 2, lines 25-30). Thundat's device falls within both claimed ranges.

It would have been obvious to one of ordinary skill in the art at the time of the invention to apply teachings from Thundat to Daraktchiev because 8/

4. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thundat modified by Maynard with teachings from Daraktchiev.

Thundat teaches a device that determines a value indicative of the temperature of the fluid (lines 37-40), but does not explicitly teach that the flexible element comprises a laminate of at least two layers, each layer having a different coefficient of thermal expansion. The use of a reference cantilever to account for temperature variation via wavelet or Fourier analysis constitutes determining some value *indicative* of temperature, and does not necessarily fall short of determining a temperature value.

Daraktchiev teaches a device wherein said actuating portion of said flexible element comprises a laminate of at least two layers, each layer having a different coefficient of thermal expansion (Daraktchiev, column 1, lines 45-50).

It would have been obvious to one of ordinary skill in the art at the time of the invention to use Thundat with teachings from Daraktchiev because Daraktchiev teaches

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a higher precision method of vibrating a cantilever than traditional external vibrators, such as piezo crystals (Daraktchiev, column 1, lines 29-35).

5. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daraktchiev modified by Maynard and Thundat with teachings from Murilo Coutinho et al. (Coutino).

Daraktchiev teaches a device comprising a plurality of flexible elements, but does not explicitly teach that the flexible elements are interdigitated.

Coutinho teaches that the plurality of flexible elements are interdigitated (Coutinho, figure 5).

It would have been obvious to one of ordinary skill in the art to combine Coutinho with teachings from Daraktchiev because Coutinho teaches that a field of MEMS cantilever devices may act, or determine actions in a variety of directions on a scale larger than the devices themselves (Coutino, page 2, lines 27-40). It is also obvious because a MEMS cantilever that is used to apply a force can just as easily be used to measure a force, as all atomic force microscopes demonstrate.

6. Claims 30 and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Thundat modified by Maynard with teachings from US Patent Application 2003/0056574 to Wolfgang Drahm et al. (Drahm).

Thundat teaches a device that uses vibration to determine liquid characteristics at a plurality of locations (Thundat, column 5, lines 57-59), but does not explicitly disclose that it can be used to determine flow rate or shear rate.

Drahm teaches a device further comprising determining a change in said movement of said flexible element; and determining a value indicative of a flow rate of the fluid from said change in movement, said change in movement being due to flow of the fluid against said flexible element (Drahm, page 5, paragraph 104) and also comprising determining a value indicative of a shear rate of said fluid by determination of the flow rate at a plurality of locations within said fluid (Drahm, page 3, paragraph 71).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Thundat with teachings from Drahm because Drahm teaches a vibratory viscometer that is 100 times more accurate than other vibratory viscometers (Drahm, page 1, paragraph 16).

Response to Arguments

7. Applicant's arguments with respect to claims 26 and 38 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gunnar J. Gissel whose telephone number is (571)270-3411. The examiner can normally be reached on Mon-Fri, 7:30AM-5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571)272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GJG/

1/21/2009

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/Hezron Williams/
Supervisory Patent Examiner, Art Unit 2856